

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

RECEIVED

OCT 29 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
1998 Biennial Regulatory Review --) MM Docket No. 98-93
Streamlining of Radio Technical Rules in)
Parts 73 and 74 of the Commission's Rules)

To: The Commission

COMMENTS OF NATIONAL PUBLIC RADIO, INC.

National Public Radio, Inc. ("NPR") submits these Comments in response to the Notice of Proposed Rulemaking, released June 15, 1998, in the above-captioned proceeding (the "NPRM"). NPR is a non-profit membership corporation of approximately 600 noncommercial educational radio stations nationwide. NPR produces and distributes such noncommercial educational programming as *All Things Considered*®, *Morning Edition*®, *Talk Of The Nation*®, and *Performance Today*®. It also operates the Public Radio Satellite Interconnection System and provides representation and membership services to its member stations.

NPR believes that the Commission's overall efforts to streamline the FM technical rules will serve the public interest and benefit noncommercial educational radio stations. However, these Comments highlight several concerns for public radio stations raised by the Commission's proposals. These concerns include the following: (a) any community of license coverage requirements for noncommercial educational FM stations should be flexible, (b) appropriate safeguards are necessary to prevent contingent applications for coordinated FM station changes from reducing the availability of public radio service, (c) the methodology for predicting interference should be consistent and easily replicated, (d) in adopting beneficial streamlining

No. of Copies rec'd 029
List ABCDE

procedures, the Commission should take measures to ensure that the first come/first served rules are fair and do not result in spectrum warehousing, and (e) where there are no interference-free channels available for a Class D station, the Commission should authorize second- and third-adjacent channel overlap between the Class D station and commercial FM stations if such overlaps are permitted between the Class D station and noncommercial FM stations.

I. The FCC's Proposals To Relax NCE FM Technical Requirements Will Benefit NCE FM Stations, Provided Community of License Coverage Requirements Are Flexible

NPR supports the proposal to modify Sections 73.509 and 74.1204(a) of its rules to specify a 100 dBu interfering contour for second-adjacent channel noncommercial educational and FM translator stations.¹ Adoption of this proposal would give noncommercial educational broadcasters a greater degree of flexibility to improve or modify their facilities, without a material degradation of service. It would also give noncommercial broadcasters the same level of flexibility currently afforded commercial FM stations.

NPR recognizes the underlying basis for the Commission's proposal to require NCE FM stations to provide 60 dBu service to at least a portion of their communities of license,² but urges the Commission to remain flexible in adopting any minimum population and/or area of a community that must be covered by an NCE FM station. As the Commission has noted, an NCE FM station licensed to a rural community may cover a large portion of the population, but only a small portion of the community of license's area. Requiring such a station to finance facilities that cover the entire area would impose an unnecessary financial burden on the station without a consequent benefit to the public. Likewise, a university station should be able to justify smaller

¹ See NPRM at ¶ 56.

² See *id.* at ¶ 58.

facilities that serve the majority of its targeted audience (the university community), but not the entire community of license.

Thus, rather than establishing an arbitrary percentage of the population or area which must be served by a NCE FM station, the Commission should simply require that an NCE FM station cover “a portion” of its community of license. Beyond imposing this basic obligation, the Commission might require stations to justify new facilities applications in certain circumstances. For instance, if an applicant proposes a new NCE FM station that serves less than a significant portion of the community of license, the Commission might require a showing of why the public interest would nonetheless be furthered. The Commission might also require such a showing when an applicant proposes a *reduction* in coverage of the community of license. In no circumstances, however, should a station be required to justify an increase in coverage of its community of license, even if the upgrade would not result in full coverage of the community of license. By adopting a basic obligation to serve a portion of a community of license, augmented by case-specific review in the circumstances described above, the Commission can facilitate improved public radio service in a way that is responsive to the needs of stations and their audiences.

II. Negotiated Interference Agreements Will Increase Flexibility, But Contingent Applications Must Not Reduce The Availability of Public Radio Service

The Commission proposes authorizing two types of “negotiated interference” agreements in the FM service: (a) agreements involving applications that would cause new or increased interference, and (b) agreements involving contingent applications for coordinated FM station changes.³ NPR supports the added flexibility that negotiated interference agreements can offer,

³ See *id.* at ¶¶ 11-27.

provided that measures are adopted to preserve the availability of public radio service in the case of contingent applications for coordinated FM station changes. The two types of negotiated interference agreements proposed by the Commission are discussed below.

A. The Proposed Criteria For Negotiated Interference Agreements Involving Applications Causing New Or Increased Interference Will Increase Flexibility

The Commission proposes allowing negotiated interference agreements that would result in prohibited interference, provided the agreements and corresponding applications fulfill four criteria.⁴ The criteria proposed by the Commission appear to provide a reasonable balance between the need for increased flexibility and the need to limit interference. Since there may be voluntary negotiated interference agreements involving combinations of commercial stations and noncommercial stations, a consistent negotiated interference agreement standard for both types of stations would ensure the fair and efficient administration of these negotiated interference rules.⁵

⁴ The four criteria are as follows:

1. Total interference received by any station must be no greater than five percent of the area and population within the station's protected service contour.
2. The total service gain must be at least five times as great as the increase in total interference, in terms of both area and population.
3. No predicted interference can occur within an affected station's community of license.
4. Any application causing or receiving interference in previously interference-free service areas would be required to demonstrate the existence of at least five remaining aural services within each interference area.

See id. at ¶20.

⁵ See id. at ¶ 27.

B. The Commission Must Adopt Measures To Prevent Coordinated FM Station Changes From Reducing The Availability Of Public Radio Service

The Commission also proposes allowing FM stations to file up to four contingent minor change applications. The Commission would impose several requirements where the contingent applications include a proposal to cancel a noncommercial educational FM license. First, the Commission has tentatively concluded that any coordinated changes proposing the cancellation of an NCE FM station license must not create “white” or “gray” areas.⁶ Second, any such agreements that would terminate a community’s only local transmission service would be considered on a case-by-case basis, taking into account such factors as the availability of other radio services. The Commission also seeks comment on whether to establish a “local service floor” to ensure that there is no loss of service that is detrimental to the public interest.⁷

As an initial matter, it appears inconsistent to prohibit stations from agreeing to accept total interference exceeding five percent of the area and population within the station’s protected service contour,⁸ yet permit contingent applications which propose the cancellation of an NCE FM license. The Commission also should protect against any loss of service caused by contingent applications that is detrimental to the public interest.

If the Commission decides to accept contingent applications which propose the cancellation of an NCE FM license, NPR agrees that such applications must not create “white” or

⁶ The FCC defines a “white” area as an area receiving no full-time aural service, and a “gray area” as an area receiving only one full-time aural service. See id. at ¶ 16 n. 25.

⁷ See id. at ¶ 16.

⁸ See id. at ¶ 20.

“gray” areas.⁹ NPR also agrees that when considering agreements to terminate a community’s only local transmission service, the Commission should take into account the availability of other services and the possibility of restoring local service.¹⁰

However, the Commission should take further steps to protect against the loss of public radio service, as required by the Public Broadcasting Act of 1967, as amended. Congress has determined that “it is necessary and appropriate for the Federal Government to complement, assist and support a national policy that will most effectively make public telecommunications services available to all citizens of the United States.”¹¹ Accordingly, the Commission should prohibit any contingent proposals which would result in the loss of a population’s only source, or one of only two sources, of *public* radio service, and would thus create “white” or “gray” *public* radio areas. In addition, when considering agreements to terminate a community’s only local transmission service, the Commission should take into account the availability of other *public* radio stations, as well as the availability of other commercial radio stations.

The Commission should apply the same principle when establishing any “local service floor.” It is difficult to recommend a uniform “local service floor,” since it depends upon the size and diversity of the service area.¹² However, regardless of the size or diversity of the service

⁹ See *id.* at ¶ 16.

¹⁰ See *id.*

¹¹ 47 U.S.C. § 396(a)(7).

¹² See In the Matter of Policies to Encourage Interference Reduction Between AM Broadcast Stations, 5 FCC Rcd 4492 (1990) (finding that the FCC could not establish a quantifiable service floor with respect to the public interest evaluation of contingent applications in the AM service, but would consider such a floor on a case-by-case basis).

area, the “local service floor” should include at least one public radio service and should consider the proportion of both noncommercial and commercial radio stations in the area.

III. The Commission Should Adopt Consistent Methodology for Predicting Interference That Can Be Easily Replicated

The Commission proposes a supplemental point-to-point (“PTP”) prediction model which takes into account terrain beyond 16 kilometers from the transmitting antenna.¹³ NPR has serious concerns regarding the accuracy and appropriateness of the PTP prediction model. Therefore, it urges the Commission to consider two principles in adopting any methodology for predicting interference. First, the methodology should be simple for applicants to replicate. Based on the initial input of our member stations, it is questionable whether the results achieved by station engineers using the PTP model would be the same as the results achieved by the FCC.

Second, the Commission should take into account other methodologies used to predict interference. As the Commission is well aware, adjacent channel interference historically has plagued reserved noncommercial FM channels operating in the vicinity of a television channel 6 station. The Commission's most recent order in the Advanced Television proceeding recognizes that, despite the transition from analog broadcasting, DTV channel 6 stations are likely to cause adjacent channel interference.¹⁴ For this reason, NPR believes the Commission should utilize a single interference methodology to assess potential interference within the FM service and

¹³ See NPRM at ¶¶ 29-35.

¹⁴ See In the Matter of Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order, MM Docket No. 87-268, at ¶ 45 (rel. Feb. 23, 1998). Indeed, NPR is filing in the Advanced Television proceeding the Final Report of its recently-concluded laboratory testing of the potential interference of DTV channel 6 stations to noncommercial reserved channel FM stations under a variety of real world conditions. NPR's laboratory testing confirms the seriousness of the DTV channel 6 interference problem.

between the co-equal FM and digital television ("DTV") services. Since the many FM stations operating in or near existing or potential television channel 6 stations will employ the Longley-Rice methodology to predict the potential adjacent channel interference,¹⁵ it is in the interest of conserving scarce NCE station engineering resources and the consistency of engineering results to use the Longley-Rice methodology to predict interference within the FM service.

IV. The Proposed Streamlining Procedures Will Expedite Service Improvements And Preserve Scarce Resources, Provided The Commission Guards Against Spectrum Warehousing

NPR supports the Commission's proposals to (a) expand the definition of a minor change for the NCE FM, AM and FM translator services, (b) use the first come/first served processing system for minor change applications filed by NCE FM, AM and FM translator stations, and (c) replace the current two-step application process for coordinate corrections and FM translator and FM booster power reductions with a single-step application process.¹⁶ Each of these proposals will expedite the ability of public radio stations to implement modifications and improvements to their facilities and will help preserve the stations' scarce resources.

NPR is concerned, however, that the first come/first served processing system may encourage a few broadcasters with extensive resources to flood the Commission with minor change applications immediately after the conclusion of this proceeding, regardless of whether they have plans to modify their facilities. This in turn could limit the ability of stations with actual upgrade plans to make necessary modifications when they need to do so. While it is difficult for the Commission to ascertain an applicant's motives, it should consider delaying the

¹⁵ See 47 C.F.R. §§ 73.622, 73.623; OET Bulletin No. 69.

¹⁶ See NPRM at ¶¶ 45-54.

initiation of the first come/first served processing system for at least six months. This would give stations with fewer resources the opportunity to reflect upon their foreseeable needs and to file one of the first minor change applications to meet these needs. The Commission also should strictly enforce its construction permit extension rules when faced with evidence of spectrum warehousing.¹⁷

V. Class D Stations Should Not Be Concentrated In The Noncommercial Band When There Are No Interference-Free Channels Available

The Commission proposes a number of revisions to the rules applicable to Class D FM stations.¹⁸ NPR supports those changes which will help reduce interference to full-service NCE FM stations. However, it questions the Commission's proposal to permit second- and third-adjacent channel NCE FM channel overlap with Class D stations, but not second- and third-adjacent commercial FM channel overlap with Class D stations, where there is no available interference-free channel for a Class D station.¹⁹ If the Commission permits second- and third-adjacent NCE FM channel overlap with Class D stations, it also should authorize second- and third-adjacent commercial FM channel overlap with Class D stations in those circumstances, so that interference from Class D stations is not concentrated in the noncommercial band and so that there are more channels available for Class D stations to avoid significant interference.

¹⁷ See 47 C.F.R. § 73.3534.

¹⁸ See NPRM at ¶¶ 59-68.

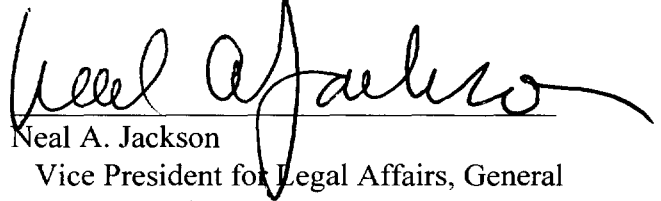
¹⁹ See *id.* at ¶ 62.

VI. Conclusion

In sum, NPR generally supports the Commission's streamlining proposals in this proceeding, but urges the Commission to ensure that the rules it adopts do not have a detrimental impact upon the availability and strength of public radio service.

Respectfully submitted,

NATIONAL PUBLIC RADIO, INC.



Neal A. Jackson

Vice President for Legal Affairs, General
Counsel and Secretary

Donald Lockett

Chief Technology Officer

Michael Starling

Vice President, Engineering

Mary Lou Kenny

Vice President, Member and Program
Services

Betsy Laird

Director, National Affairs

Gregory A. Lewis

Associate General Counsel

Michelle M. Shanahan

Assistant General Counsel

635 Massachusetts Avenue, NW
Washington, DC 20001
(202) 414-2040

October 20, 1998